



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/963,793      | 09/26/2001  | Kevin J. Kollar      | CV-0291US           | 9122             |

9561 7590 03/12/2004

POPOVICH, WILES & O'CONNELL, PA  
650 THIRD AVENUE SOUTH  
SUITE 600  
MINNEAPOLIS, MN 55402

EXAMINER

MAYNARD, JENNIFER J

ART UNIT PAPER NUMBER

3763

DATE MAILED: 03/12/2004

11

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application N .

09/963,793

Applicant(s)

KOLLAR ET AL.

Examiner

Jennifer J Maynard

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

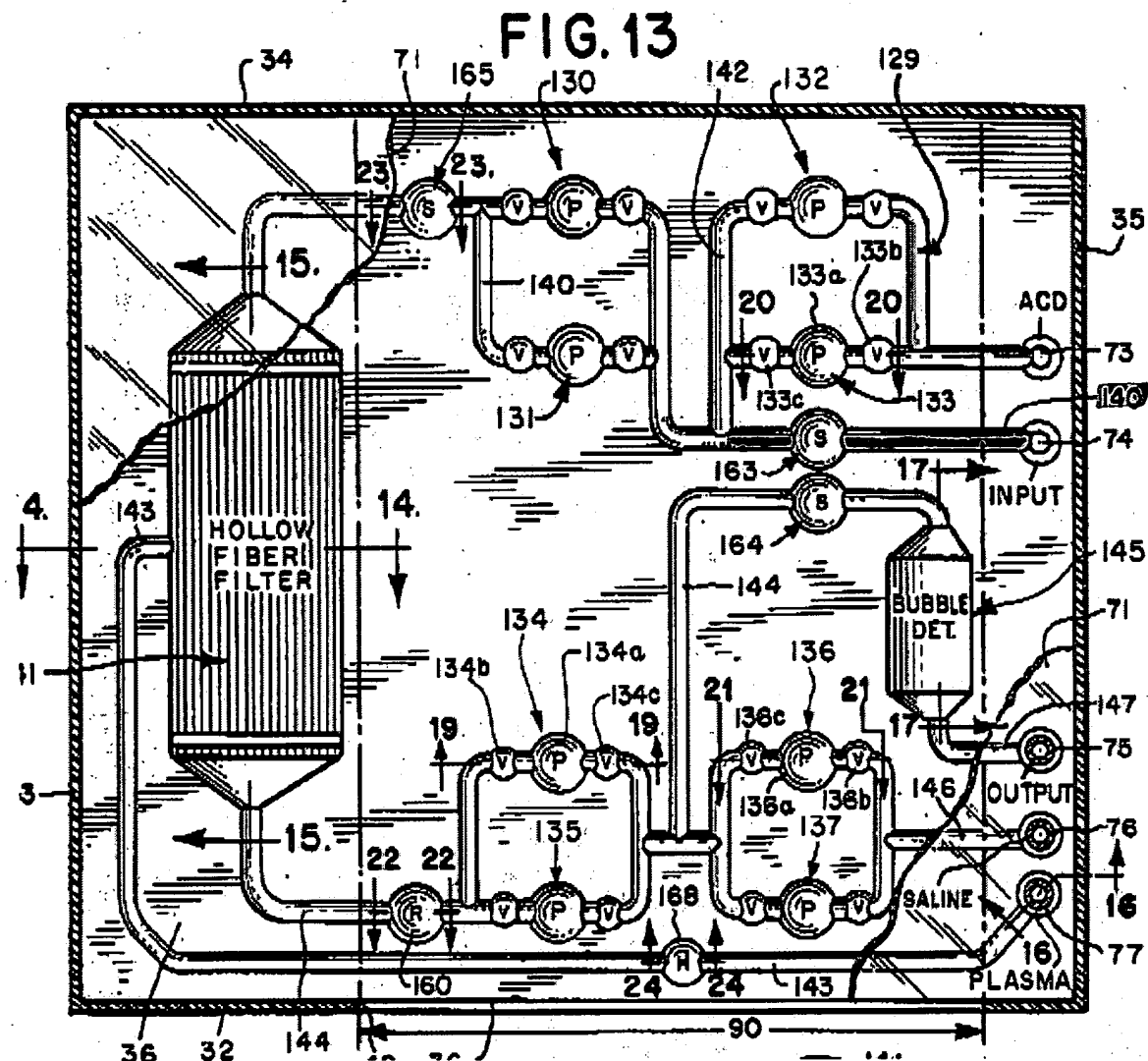
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Bilstad et al.

(US 4,479,762 A).

Bilstad et al. discloses a fluid processing module having a disposable cartridge comprising: a housing (20) defining a plurality of internal passageways (140, 142, 143, 144, and 146), an internal cardiopulmonary passageway (140) being configured for operative connection to a cardiopulmonary circuit, an internal cardioplegia passageway (142) configured for operative connection to a cardioplegia delivery circuit and an internal suction passageway (144) being configured for connection to a suction circuit, (Note: the Examiner has interpreted any passageway subjected to negative pressure as being configured for connection to a suction circuit.). See Figure 13; Column 9, line 14 through Column 10, line 68.



■ = an internal cardiopulmonary passageway

□ = an internal cardioplegia passageway

○ = an internal suction passageway

△ = site of connection to positive pressure source which creates a negative pressure in the designated internal suction passageway

Claims 1, 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Merte et al. (US 5,423,749 A).

Merte et al. discloses a cardioplegia administration system having a disposable cartridge comprising: a housing (200) defining a plurality of internal passageways (108, 116, 126 and 151), an internal cardiopulmonary passageway (116) being configured for operative connection to a source of blood or blood substitute (122) and having a pinch valve (132) situated therein, an internal cardioplegia passageway (108) configured for operative connection to the cardioplegia delivery circuit and having a pinch valve (130) situated therein, and an internal suction passageway (124) being configured for connection to a suction circuit, (Note: the Examiner has interpreted any passageway subjected to negative pressure (104) as being configured for connection to a suction circuit.). See Figures 5 and 9; and Column 5, lines 5-49.

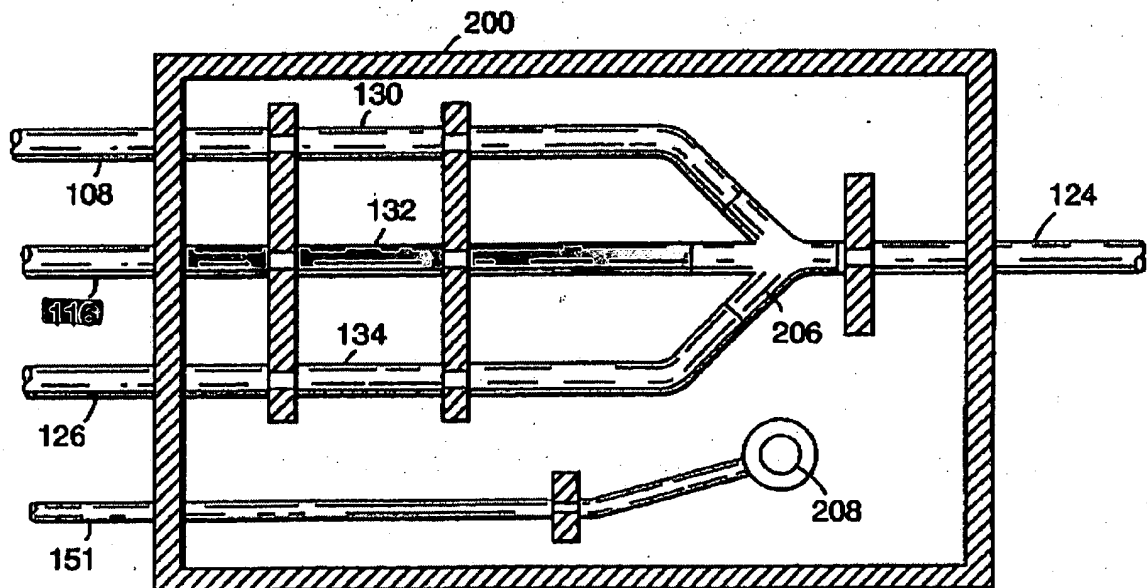



FIG. 9

 = an internal cardiopulmonary passageway

Art Unit: 3763

= an internal cardioplegia passageway

= an internal suction passageway

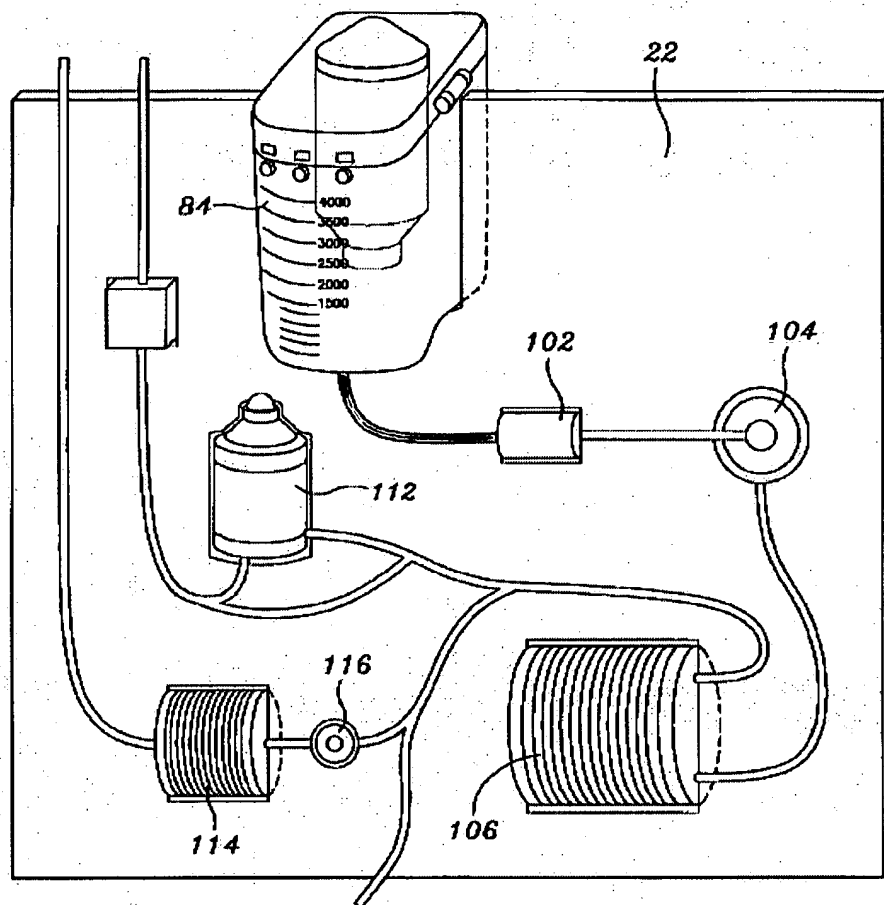
= site of connection to positive pressure source which creates a negative pressure  
in the designated internal suction passageway

Claims 1-3 and 6-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Fallen et al. (US 6,632,189 A).

Fallen et al. discloses a support system for surgical systems having a disposable cartridge comprising: a housing (22) defining a plurality of internal passageways (50), an internal cardiopulmonary passageway (110, see labeled Figure 3 below) being configured for operative connection to a cardiopulmonary circuit for receiving venous blood from a patient (80) and having a valve (102) situated therein, an internal cardioplegia passageway (no reference numeral, see labeled Figure 3 below) configured for operative connection to the cardioplegia delivery circuit, and an internal suction passageway (no reference numeral, see labeled Figure 3 below) being configured for connection to a suction circuit, (Note: the Examiner has interpreted any passageway subjected to negative pressure (104) as being configured for connection to a suction circuit.). See Figures 2, 3 and 6; and Column 6, line 24 through Column 7, line 19.

Art Unit: 3763

*Fig. 3*



■ = an internal cardiopulmonary passageway

■ = an internal cardioplegia passageway

■ = an internal suction passageway

○ = site of connection to positive pressure source which creates a negative pressure in the designated internal suction passageway.

***Response to Arguments***

Applicant's arguments filed 10 December 2003 have been fully considered but they are not persuasive.

The Examiner directs Applicant to the labeled Figure 13, for a clear explanation of what elements are interpreted as anticipating Applicant's claimed structural recitations.

Further, the Examiner has interpreted Applicant's use of descriptive terms, i.e. "an internal *cardiopulmonary* passageway", "an internal *cardioplegia* passageway", and "an internal *suction* passageway", as not further structurally limiting the scope of the claim but rather merely Applicant's attempt to further differentiate Applicant's invention via intended use language. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim, thus Bilstad et al.'s disclosure of an internal donor blood passageway (140) is capable of performing as Applicant's claimed "internal cardiopulmonary passageway", while Bilstad et al.'s internal anticoagulant passageway (142) is capable of performing as Applicant's claimed "internal cardioplegia passageway", and finally, Bilstad et al.'s internal filter outflow passageway (144) is capable of performing as Applicant's claimed "internal suction passageway". See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).



Art Unit: 3763

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer J Maynard whose telephone number is 703.305.1356. The examiner can normally be reached on Mondays-Fridays 9:30 AM-5:30 PM; 1st Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703.308.3552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

J Maynard



**BRIAN L. CASLER**  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700